

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2840 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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DIVISIONAL CONTROLLER

Versus

NANDLAL J DAVE

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Appearance:

Mr HC Raval for Petitioner

NOTICE SERVED for Respondent No. 1

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CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 01/10/1999

ORAL JUDGEMENT

Mr. Raval, the learned advocate is appearing for the petitioner Corporation. Though served, the respondent has not appeared either in person or through advocate.

The facts of the present petition, in short, are that the respondent was working with the Corporation as

Badli Conductor for more than three years. On 12.6.1986, while the respondent workman was on route from Ambaji to Gadhdha, at that time, his bus was checked by the checking party and it was found that two passengers were travelling from Ambaji to Ahmedabad from whom the fare was collected and the tickets were reissued of the denomination of Rs. 13.00. On the basis of the report submitted by the checking party, one notice was issued upon the respondent to show cause as to why his name should not be deleted from the wait list of Badli conductors which was replied by the respondent and thereafter, name of the respondent was deleted from the wait list of badli conductors on 19.8.86 by the petitioner Corporation and it has resulted into termination of the services of the respondent workman. Said action of the petitioner corporation was challenged by the respondent workman before the labour court Bhavnagar in Reference No. 618 of 1987. Before the labour court, it was contended by the respondent workman that the services of the respondent workman were terminated on the basis of an allegation of misconduct said to have been committed by the respondent workman as per the report made by the checking party. However, no chargesheet was served to the respondent and no departmental inquiry was held against the respondent and without giving any reasonable opportunity and following the principles of natural justice, the services of the respondent workman were terminated by deleting his name from the list of Badli Conductors by believing that the misconduct was proved.

On the basis of the material brought before it, the labour court has come to the conclusion that the services of the respondent workman were terminated on the basis of the alleged misconduct of reissuing the tickets and, therefore, the Corporation ought to have held the departmental inquiry and the corporation ought to have taken such an action after affording reasonable opportunity to defend his case, according to the principles of natural justice. Therefore, the labour court held that the petitioner corporation has taken the action in violation of the principles of natural justice and hence the termination is illegal. As a consequence of such findings, the labour court directed the petitioner corporations reinstate the respondent workman with continuity of service but without back wages for the intervening period, under its judgment and award dated 13.7.1988. Feeling aggrieved by the said judgment and award, the petitioner has approached this court by way of this petition under Article 227 of the Constitution of India.

This Court, while admitting this petition by issuing rule thereon, has granted the ad interim stay which was subsequently directed to continue till further orders by order dated 17.12.1990.

I have heard Mr. Raval, the learned advocate for the petitioner corporation. According to Mr. Raval, the respondent workman has committed serious misconduct in reissuing the tickets and since he was a mere badli conductor, no full fledged departmental inquiry was required to be initiated against him. He has submitted that a show cause notice was issued against him before taking the action and since the explanation was not found satisfactory, his name was struck off from the list of badli conductor and, therefore, the labour court was having no jurisdiction to grant reinstatement to the respondent workman.

I have considered the submissions of Mr. Raval, the learned advocate for the petitioner Corporation. It is not in dispute that the services of the respondent workman were terminated by the petitioner corporation by deleting his name from the wait list of badli conductors. It is also not in dispute that before taking such harsh action, the petitioner corporation has not initiated the departmental proceedings against the respondent workman. According to my view, mere issuance of the show cause notice cannot be said to be the compliance of the principles of natural justice for taking such a harsh action and on that ground, the labour court has granted reinstatement to the respondent workman, of course, without back wages and, therefore, the impugned judgment and award of the labour court does not require any interference by this court in exercise of the powers under Article 226 and/or 227 of the Constitution of India. Mr. Raval has not been able to point any infirmity in the judgment and award of the labour court impugned before this Court. Therefore, the petition is required to be dismissed and accordingly, it is ordered to be dismissed with costs. Ad-interim relief is vacated. Rule is discharged.

While admitting this petition, ad interim relief against the operation of the impugned judgment and award was granted. Now, since I am dismissing this petition, the petitioner corporation is required to be directed to reinstate the respondent workman in service with all the back wages from the date of the impugned judgment and order till the date of his actual reinstatement in service within some stipulated period. Accordingly, in

the interest of justice, the petitioner corporation is directed to reinstate the respondent workman in service with continuity of service and also with back wages from the date of the impugned judgment and order till the date of his actual reinstatement as expeditiously as possible, preferably within three months from the date of receipt of this order.

1.10.1999. (H.K.Rathod,J.)

Vyas